

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

A.C.,

Plaintiff,

v.
**Case No. 2:20-cv-5966
Chief Judge Algenon L. Marbley
Magistrate Judge Elizabeth P. Deavers**

BEST BUY STORES, LP, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff originally filed this action in the Franklin County Court of Common Pleas setting forth claims under the Computer Fraud and Abuse Act, 18 U.S.C. 1030 *et seq.*, the Stored Communications Act, 18 U.S.C. 2701 *et seq.*, and Ohio law. Defendant Best Buy Stores, LP (“Best Buy”) removed the action to this Court on November 18, 2020. (ECF No. 1.) On February 18, 2021, the Court directed Plaintiff to file a written status report by February 25, 2021, advising the Court as to the status of service of process. (ECF No. 6.) Plaintiff responded by requesting an extension of time to complete service on Defendant Caleb North. (ECF No. 7.) On February 26, 2021, the Court granted Plaintiff an extension of time until April 2, 2021, to complete service on Defendant North. (ECF No. 8.) Plaintiff sought and was granted an additional extension of time until April 16, 2021, to complete service. (ECF Nos. 9, 10.)

On April 16, 2021, Plaintiff filed a motion for leave to serve a subpoena on Columbus State Community College and requested a further extension of time to complete service. (ECF No. 11.) The Court construed Plaintiff’s motion as one for expedited discovery designed to locate Defendant North and, noting the absence of demonstrated good cause, denied it without

prejudice by Order dated April 20, 20201. (ECF No. 12.) The Court also, however, granted Plaintiff a further extension of time until May 19, 2021, to complete service on Defendant North. (*Id.*)

On June 2, 2021, the Court ordered Plaintiff to show cause within fourteen days why the claims against Defendant North should not be dismissed and why an extension of time to effect service should be allowed. (ECF No. 15.) Plaintiff responded on June 16, 2021, by renewing the request to serve a subpoena on Columbus State Community College and requesting leave to serve a subpoena on Adena Health Systems. (ECF No. 16.) In this response, Plaintiff recognized that, absent the ability to complete service on Defendant North, dismissal of this Defendant would be warranted. (*Id.* at 3.) By Order dated June 28, 2021, the Court granted Plaintiff's renewed request to serve a subpoena on Columbus State Community College but denied Plaintiff's request as it related to Adena Healthcare Systems. (ECF No. 17.) The Court also granted Plaintiff an extension of time until July 30, 2021, to complete service on Defendant North.

To date, the Court's docket reflects that Plaintiff has not completed service on Defendant North nor has he requested any further extensions of time in which to do so. It is therefore **RECOMMENDED** that Plaintiff's claims against Defendant Caleb North be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m) for failure to timely effect service of process.

PROCEDURE ON OBJECTIONS

If any party objects to this *Report and Recommendation* ("R&R"), that party may, within fourteen days of the date of this R&R, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A District Judge of this Court shall make a *de novo*

determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a District Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. 636(B)(1).

The parties are specifically advised that failure to object to this R&R will result in a waiver of the right to have the District Judge review the R&R *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the R&R. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981)

/s/ Elizabeth A. Preston Deavers

DATED: August 31, 2021

**ELIZABETH A. PRESTON DEAVERS
UNITED STATES MAGISTRATE JUDGE**